

REMARKS

Claims 1-23 are all the claims pending in the application. New claims 14-23 have been added as a copy of the claims from US Patent 6,290,147, for the purposes of eventually provoking an interference therewith. Reconsideration and allowance of all the claims are respectfully requested in view of the following remarks.

Response to Amendment

The Examiner noted, in item number 1 of the Office Action, that the marked-up version of the claims submitted in the May 29 Preliminary amendment appeared to include a typographical error, whereby claim 7 was indicated instead of claim 6. The Examiner's understanding of the May 29 Preliminary Amendment is correct.

Drawings

- The Examiner objected to the drawings as including certain reference signs not mentioned in the specification. Accordingly, Applicant has amended the specification to include the noted reference signs "1a", "5b", and "3c". No new matter has been entered.
- Further, the Examiner objected to the drawings as not showing every feature of the invention specified in the claims. Specifically, the Examiner asserted that "the 'reset mechanism' (two ribs 3b and the guide curves 5a and stop cam 5f) recited in claims 1, 8, [and] 9" must be shown. Applicants respectfully traverse this objection because the reset mechanism is, indeed, shown in the figures.

The ribs 3b and guide curves 5a are shown in Figs. 1-3, whereas the stop cam 5f is shown in Fig. 2. For the Examiner's convenience, submitted herewith is a copy of Figs. 1-3 wherein the ribs 3b are highlighted in blue, the guide curves 5a are highlighted with yellow, and the stop cam 5f is highlighted in pink.¹ The function of these elements is disclosed on page 5, lines 12-15, for example. When the button 3 is rotated, the ribs 3b are pressed to the guide curves and the button

¹ See Enclosure C having Figs. 1 and 2, as well as Enclosure B having Fig. 3.

3 is moved upwards. The spring 7 supports this upward movement. Thus, the drawings clearly show the reset mechanism, including the parts noted by the Examiner.

Claim Rejections - 35 U.S.C. § 112

- The Examiner rejected claims 1-13 under §112, 1st paragraph, as containing subject matter not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention. Applicant respectfully traverses this rejection because the claimed subject matter is, indeed, adequately described in the specification.

Claim 1 sets forth that the rotation of cover (1) enables the movement of the valve from position 17 to position 16. This is described in the specification at page 5, lines 4-17, for example. Further, the specification describes that the valve moves from position 16 to position 17 by depressing membrane 2 and button 3, as indicated in Fig. 1 with arrow A. This movement is further described in the specification at the paragraph bridging pages 4 and 5.

In light of the above, this rejection is believed to be in error, and should be withdrawn.

- The Examiner rejected claims 1-13 under §112, 2nd paragraph, as indefinite. On page 4 of the Office Action, the Examiner cited alleged instances of indefiniteness. Applicant has amended claim 1 in a manner believed to overcome this rejection. In doing so, however, the amendments do not narrow the claims, they merely redefine or rearrange what was already included and, therefore, the claims are not subject to prosecution history estoppel. See: *Turbocare Corp. v. General Electric Co.*, 60 USPQ.2d 1017 (Fed. Cir. August 29, 2001) (*Festo*² is not applicable to a claim wherein a limitation is only redefined without narrowing the claim.). Further, Applicant's redrafting of the claims in order to overcome the § 112 rejection was done strictly for cosmetic purposes and not for narrowing the scope of the existing claims. See *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 2002 U.S. LEXIS 3818, *27 (May 28, 2002) ("If a 35 U.S.C. § 112 amendment is truly cosmetic, then it would not narrow the patent's scope or raise an estoppel.").

² *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 234 F.3d 558, 56 USPQ.2d 1865 (Fed. Cir. 2000) (*en banc*), vacated and remanded, 2002 U.S. LEXIS 3818, (May 28, 2002).

- The Examiner rejected claims 1-13 under §112, 2nd paragraph, as being incomplete for omitting essential elements. Applicant respectfully traverses this rejection because the claims are not indefinite; they are merely broad. And breadth of a claim is not to be equated with indefiniteness.³ By not reciting the button 3 between the membrane 2 and the shut-off 9, the claims encompass other structures for coupling the movement of the membrane 2 with the shut-off 9. The definition of the invention in such broad terms does not make the claims indefinite. Nonetheless, dependent claims 6-10 do recite the button 3. Accordingly, this rejection is believed to be in error and should be withdrawn.

Claim Rejections - 35 U.S.C. § 102

- The Examiner rejected claims 1-13 under §102(e) as being clearly anticipated by US Patent 6,290,147 to Bertrand et al. (hereinafter Bertrand). To overcome this rejection, Applicant has filed herewith a verified English translation of the Swiss priority document 1777/99, filed on September 29, 1999, thereby perfecting priority. Accordingly, because the present application's priority date of September 29, 1999 is prior to Bertrand's effective filing date of September 19, 2000, Bertrand is not prior art to the present application. Accordingly, this rejection should be withdrawn.

Claim Rejections - 35 U.S.C. § 103

- The Examiner rejected claims 1-7 and 10-13 under §103(a) as being unpatentable over US Patent 3,341,132 to Parkinson (hereinafter Parkinson) in view of US Patent 5,145,114 to Mönch (hereinafter Mönch). Applicant respectfully traverses this rejection because the references fail to establish *prima facie* obviousness in that they fail to teach or suggest every element as set forth in Applicant's claims.

Claim 1 sets forth a showerhead comprising an outer casing, a valve body, a shut-off and a rotating cover, wherein the shut-off can be moved, by rotating the cover, from a second valve position to a first valve position.

³ *In re Miller*, 441 F.2d 689, 169 USPQ 597 (CCPA 1971).

Parkinson discloses a spout diverter valve provided with a shut-off 38. A spray is put into operation after a handle 48 is depressed and the shut-off 38 closes a discharge opening 34. A single-handle control 14 permits regulation of the temperature and flow rate of the water. In order to reset the shut-off 38, it must be lifted at the handle 48. Parkinson does not disclose that rotation of the ball member returns the shut-off 38 to the position shown in Fig. 2 from a position wherein it blocks flow to discharge opening 34.

Parkinson does not disclose a cover as set forth in claim 1. The reference number 24 shows a ball member and not a cover. Further, Parkinson does not disclose a rotation cover and a membrane arranged in the rotating cover.

Mönch discloses a spray head for a sink provided with a releasing valve for normal jet discharge or spray discharge. A push button 14 can lower a valve body 16 in an axial direction. In order to reset the valve body 16, a lever is pivoted as indicated on enclosure A attached herewith.

Accordingly, Mönch does not teach or suggest a rotation cover as set forth in claim 1. Further, Mönch does not teach or suggest a membrane arranged in a rotating cover. The shut-off disclosed by Mönch cannot be moved by rotating a cover as claimed by Applicant.

Therefore, *arguendo*, even assuming one of ordinary skill in the art were motivated to combine Parkinson and Mönch as suggested by the Examiner, any such combination would still not teach or suggest a rotating cover as defined in Applicant's claim 1.

For at least the above reasons, claim 1 is allowable over Parkinson in view of Mönch. Likewise, dependent claims 2-7 and 10-13 are allowable over Parkinson in view of Mönch.

New Claims

As noted above, new claims 14-23 have been added as a copy of the claims in US Patent 6,290,147, for the purposes of eventually provoking an interference therewith. Applicant notes that support for these claims is found throughout the specification as follows. Claims 14-23 are reproduced below with reference numerals from the present specification in parenthesis denoting points of support therefor.

14. A multiple discharge faucet spout including a shell (6) having a waterway (11a) therein, a valve body (5) positioned within the shell and having a water passage (12, 13, 14, 22, 23) in communication with the waterway (11a), water discharge means attached to the valve body and including a spray discharge (18) and a stream discharge (20), a valve member (9a) movable within the valve body (5) to control water flow from the valve body water passage (12, 13, 14, 22, 23) to either the spray discharge (18) or the stream discharge (20), spring means (7) located on the valve body (5) and normally biasing said valve member (9a) to a first position (upper valve position 16) in which the valve member (9a) opens communication between the waterway (11a) and the stream discharge (20) and closes communication between the waterway (11a) and the spray discharge (18),

a movable control member (3) attached to the valve member (9a) and effective, upon inward movement thereof (direction of arrow A), to move the valve member (9a) to a second position (valve position 17) for closing communication between the waterway (11a) and the stream discharge (20), and opening communication between the waterway (11a) and the spray discharge (18), water pressure in said valve body water passage holding said valve member in said second position (valve position 17. See also page 4, line 23 to page 5, line 6),

a rotatable release member (1) mounted on said shell (6) and attached for concurrent rotation to said control member (3), interengaging release means (3a and 5a) on said control member (3) and said valve body (5) whereby rotary movement of said release member (1) and control member (3) effect outward movement (opposite to direction of arrow A) of said control member (3) to return said valve member (9) to said first position (upper valve position 16. See also page 5, lines 6-19).

15. The faucet spout of claim 14 wherein said control (3) member is mounted on said valve body (5), with said spring means (7) normally biasing said control member (3) outwardly (direction opposite to arrow A) therefrom.

16. (New) The faucet spout of claim 15 wherein said interengaging release means includes an outwardly-inclined ramp (3a) on said control member (3) and a cooperating projection (5a) on said valve body (5), whereby rotary movement of said control member results in outward movement thereof. Although the ramp and projection as claimed are reversed from the arrangement shown and described in the specification, a mere reversal of parts is well within the ordinary skill of the art. After all, only one sample implementation of the present invention is explained in the specification, as noted on page 3, 3rd full paragraph.

17. The faucet spout of claim 16 wherein said interengaging release means includes a pair of diametrically opposed outwardly-inclined ramps (3a) on said control member (3) and a pair of diametrically opposed cooperating projections (5a) on said valve body (5). Again, see the note with respect to claim 16.

18. The faucet spout of claim 16 wherein said spring means (7) imparts rotary force to said control member (3) and release member (1) to turn said control member (3) and release member (1) upon completion of the outward movement of said control member (3). Note the specification at page 4, 1st full paragraph, as well as page 5, 1st full paragraph.

19. The faucet spout of claim 18 wherein said spring means (7) is a coiled spring, attached at one end thereof to said valve body (5), and at another end to said control member (3), said spring being seated within a groove (5c) in said valve body.

20. The faucet spout of claim 14 wherein said valve body water passage includes spaced valve seats (16, 17), said valve member (9a) having a sealing surface which closes on one or the other of said valve seats (16, 17) in said first and second positions (upper and lower) of said valve member (9a).

21. The faucet spout of claim 14 wherein said release member (1) is attached (1a, 5b) for rotary movement to said valve body (5). See page 4, 3rd full paragraph.

22. The faucet spout of claim 14 wherein said release member (1) includes a flexible membrane (2) attached thereto and in alignment with said control member (3). See page 4, 3rd and 4th full paragraphs.

23. The faucet spout of claim 14 wherein said water discharge means (18, 20) includes a spray head (4, 10) attached to said valve body (5) and having a circumferential array of openings (18) in communication with said valve body water passage (12, 13, 22, 23), said discharge means (18, 20) further including an aerator (21) positioned within said spray head (4, 10) and in communication with said valve body water passage (12, 13, 14).

In light of the above, the newly added claims 14-23 are fully supported by the specification as filed.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,


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APPENDIX
VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE SPECIFICATION:

The specification has been changed as follows:

On page 4, the 3rd full paragraph has been amended as follows:

A cover 1 is ring-shaped in design and has an upper round opening 1d, in which an elastic rubber membrane 2 is inserted. The membrane 2 is preferably braced on the cover 1 by means of prop cams 2a. The membrane 2 is partially spherical in design and has a large protruding area on top and in the middle. The membrane 2 also lies flush against the exterior of the ring-shaped cover 1. The cover 1 is secured to the valve body 5, preferably by means of a bayonet or prop connection 1a, 5b.

On page 5, the 1st full paragraph has been amended as follows:

The shower is therefore switched from the perlator setting to the spray setting by pressing the membrane 2. If the hydraulic pressure is greater than 0.5 bar, for example, the water holds the shut-off 9 in this position against the retroactive force of the spring 7. In order to switch the valve, the cover 1 is turned clockwise around axis B by means of the protruding knob 1c shown in Figure 1. In this process, two ribs 3b of the button 3 intervene with guide curves 5a molded onto the valve body 5. Through this intervention, the button 3 is moved upward with the support of the spring 7. Stops 5e restrict this movement. The pre-stressed spring 7 forces the button 3 against the stop cam 5f. This movement of the button 3 places the garter spring 7 under tension. If the cover 1 is released, the spring 7 swings the button 3 around the axis B back into the position shown in Figure 2. In order for this spring 7 to function as a torsion spring, its ends are accordingly supported in a groove 5c of the valve body 5 and in a groove, adjacent to portion 3c of the button 3, but not shown in detail here.

IN THE CLAIMS:

The claims have been amended as follows:

1. (Amended) Showerhead [with] comprising:

an outer casing (6), in which is arranged an adjustable valve with a valve body (5) and a shut-off (9) routed through this valve body (5), [whereby] wherein one end of said shut-off (9) is arranged below a membrane (2) that can be pressed in so that the shut-off (9) can be adjusted to change [the] a fluid stream setting by pressing in the membrane (2) against [the] a retroactive force of a spring (7) from a first valve position (16) to a second valve position (17) [, with] ; and

a reset mechanism, whereby the shut-off (9) can be moved from [one] the second valve position (17) to [another] the first valve position (16), characterized in that the reset mechanism is activated by a rotating cover (1) disposed adjacent said outer casing (6), wherein the membrane (2) is arranged in [a] the rotating cover (1), and [that the] further wherein the shut-off (9) can be moved, by rotating the cover (1), from [one] the second valve position (17 [, 16]) to the [other] first valve position (16 [, 17]).

3. (Twice Amended) Showerhead according to claim 1, characterized in that the cover (1) has a [preferably] round opening (1d), in which the membrane (2) is inserted flush with the exterior.

Claims 14-23 have been added as new claims.

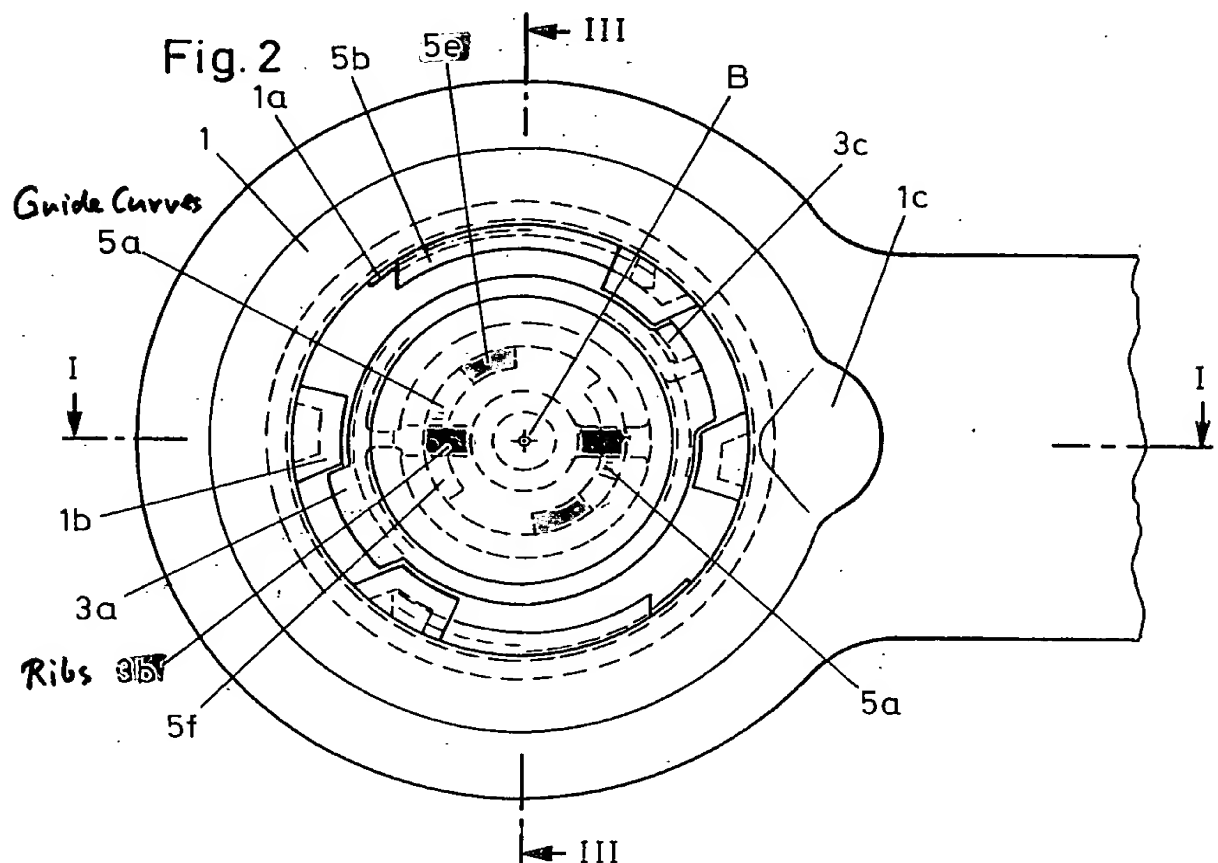
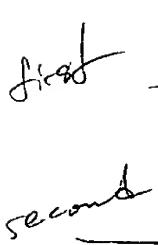
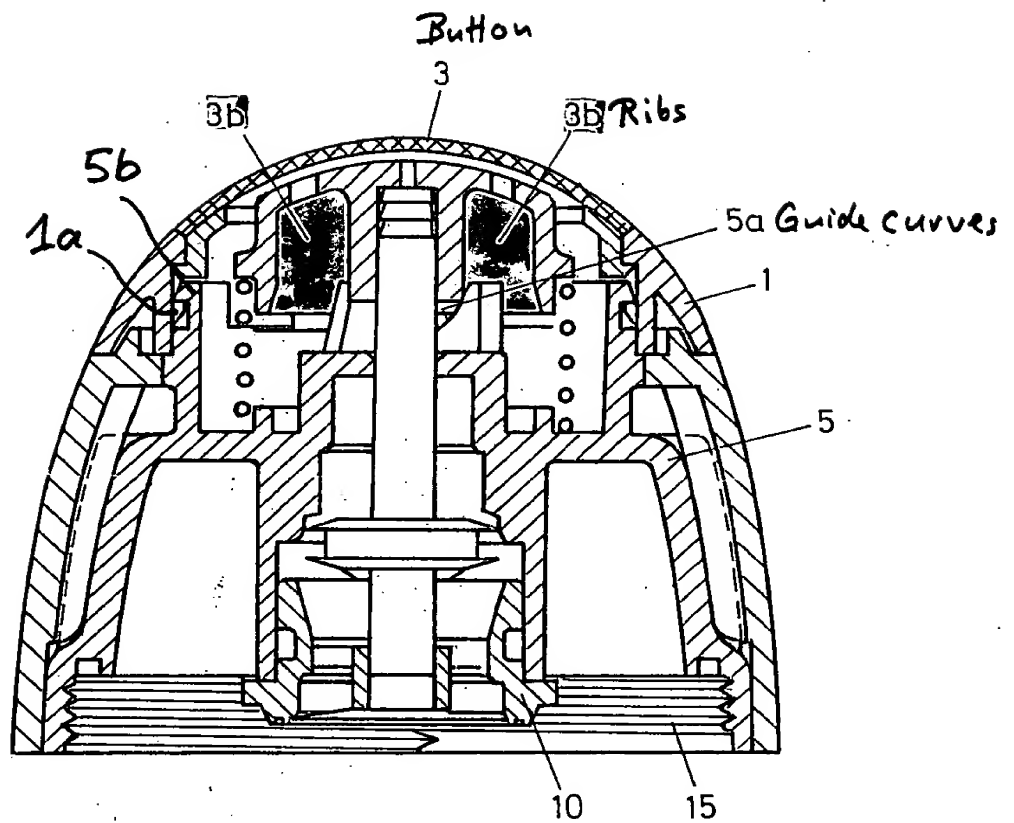




Fig. 3



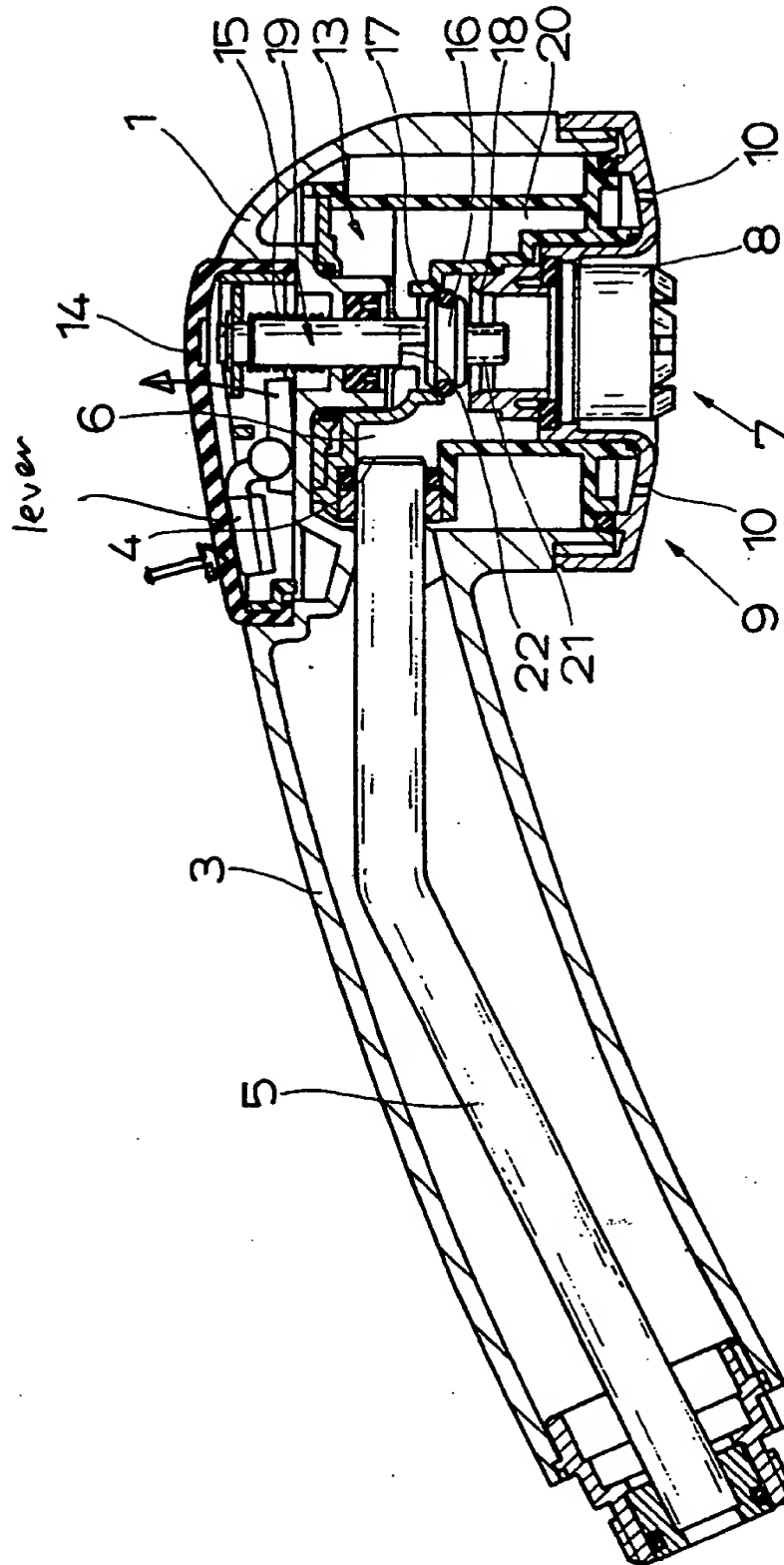


Fig. 2